

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2108 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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GUJARAT HOUSING BOARD

Versus

NAVINGAR KHIMGAR GOSAI

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Appearance:

Smt. K.A. Mehta, Advocate, for the Petitioner

Shri Suresh M. Shah, Advocate, for Respondent No.

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Shri T.H. Sompura, Asst. Govt. Pleader, for  
Respondent No. 2

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 22/07/96

ORAL JUDGEMENT

The order passed by the Collector of Bhuj (respondent No. 2 herein) on 31st January 1996 is under challenge in this petition under articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 2 has directed the petitioner not to make any construction in the common plot described as Common Plot D admeasuring 785.42 square meters (the disputed plot for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioner is the Housing Board constituted under the Gujarat Housing Board Act, 1961. It approached the government for grant of land for raising dwelling units presumably for lower income group people in Bhuj. By the order passed by respondent No. 2 on 9th March 1988, a parcel of land admeasuring 45152 square meters from survey No. 870 (part) situated at Bhuj came to be granted to it on certain terms and conditions. Its copy is at Annexure G to this petition. Pursuant thereto, the petitioner prepared a plan for construction of about 300 dwelling units for lower income group people. A plan in that regard was prepared. The Municipality at Bhuj approved the construction plan. It appears to have been submitted to respondent No. 2 for his approval and by his order passed on 18th March 1989 the plan came to be approved by respondent No. 2. Its copy is at Annexure H to this petition. In that plan, 4 common plots were shown including the disputed plot. The petitioner wanted to utilise that common plot for raising 36 dwelling units for middle income group people. It appears that a plan for construction of such 36 dwelling units for middle income group people was submitted to the Municipality at Bhuj for approval. The local authority approved it. It appears that prior thereto 300 dwelling units for lower income group people were already constructed and they were allotted to the allottees belonging to lower income group people. It appears that they formed their own association in the name and style of Kailasnagar Housing Association (the Association for convenience). The entire complex housing 300 dwelling units for lower income group people was styled as Kailasnagar colony. It appears that the association objected to raising of 36 dwelling units for middle income group people in the disputed plot. Thereupon respondent No. 2 asked the petitioner to furnish details in that regard by his communication of 23rd December 1994 and not to make any construction if no permission was given for the purpose. Its copy is at Annexure K to this petition. It appears that later on the association withdrew its objection and thereupon, by his

communication of 3rd April 1995, respondent No. 2 directed the petitioner to get the revised building plans approved by the Municipality at Bhuj and to make constructions of 36 dwelling dwelling units for the middle income group people thereafter. Its copy is at Annexure L to this petition. It appears that thereafter the petitioner got the plan for construction of 36 dwelling units for middle income group people approved by the Municipality at Bhuj. It appears that prior thereto the Municipality at Bhuj had directed the petitioner not to proceed with construction of 36 dwelling units for middle income group people. Thereupon the petitioner addressed one communication of 21st October 1995 to the Chief Officer of the Municipality at Bhuj and pointed out to him that, after obtaining approval of the revised plans, the construction of dwelling units for middle income group people was undertaken through a contractor. Its copy is at Annexure M to this petition. Its copy was also endorsed to respondent No. 2 for his necessary action in that regard. It appears that respondent No. 1 approached respondent No. 2 against such construction undertaken by and on behalf of the petitioner. It appears that respondent No. 2 found such construction to be in contravention of certain terms and conditions prescribed in the order of grant at Annexure G to this petition. Thereupon a show-cause notice came to be issued on 6th November 1995 calling upon the petitioner to show cause why appropriate actions should not be taken for breach of such conditions. Its copy is at Annexure B to this petition. It appears that an interim direction was also issued to the petitioner not to make any further construction. The petitioner filed its reply on 16th November 1995 with respect to the aforesaid interim direction and on 4th January 1996 against the show-cause notice. A copy of the aforesaid replies are at Annexures C and D respectively to this petition. Thereafter, by the order on 31st January 1996, respondent No. 2 directed the petitioner not to carry on construction in the disputed plot. Its copy is at Annexure E to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning its correctness.

3. It may be mentioned at this stage that learned Assistant Government Pleader Shri Sompura for respondent No. 2 has kept one official from the office of respondent No. 2 present with the record of the case. The record has fairly been shown to me as and when it was found necessary.

4. It appears that the impugned order at Annexure E to this petition has been passed inter alia for breach of conditions Nos. 6 and 13. Condition No. 6 required the petitioner to obtain the plans approved by respondent No. 2 after the building plans were approved by the local authority. Condition No. 13 enjoined upon the petitioner not to raise any construction on any plots kept as common plots and they were to be kept open and were to be used only for some public purposes. So far as condition No. 6 is concerned, it appears that the communication at Annexure M to this petition endorsed to respondent No. 2 has been lost sight of by him. Learned Assistant Government Pleader Shri Sompura for respondent No. 2 has submitted that the communication at Annexure M to this petition was received by respondent No. 2 without any accompanying plan, and as such no action was taken thereon. Even if it was so, respondent No. 2 could have directed the petitioner to supply the annexure or the plan approved by the Municipality at Bhuj. It was not desirable on his part to have sat tight over the communication at Annexure M to this petition.

5. So far as the question of breach of condition No. 13 is concerned, everything would depend upon the course of action adopted by respondent No. 2 with respect to condition No. 6 in the light of the communication at Annexure M to this petition. If the plan was not received, respondent No. 2 could and even now can ask the petitioner to supply the deficiency so as to enable him to take an appropriate action or decision in that regard.

6. Respondent No. 2 has also mentioned in his order at Annexure E to this petition that the grant of land by the order at Annexure G to this petition was only for construction of dwelling units for lower income group people and not for any other purpose. That point is however not properly highlighted in the order at Annexure E to this petition. Besides, it is not reflected in the show-cause notice at Annexure B to this petition.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure E to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No. 2 for his fresh decision according to law after giving an opportunity of hearing to all the parties concerned including respondent No. 1 herein. It will be open to the parties to raise all possible contentions before respondent No. 2 after the matter goes back to respondent No. 2 for his fresh

decision according to law. It will be open to respondent No. 2 to serve a fresh show-cause notice if so desired.

8. Before parting, one fact requires to be noted.

When this matter was taken up for its hearing earlier on 16th July last, it was found desirable to get the construction work stopped by the petitioner despite grant of the ad-interim relief by this Court by the order passed on 4th April 1996. No specific written order was passed. Learned Advocate Smt. Mehta for the petitioner agreed that instructions would be given to the concerned officer of the petitioner at Bhuj to stop construction work. It appears that instructions could not be communicated till 18th July 1996. On 19th July last, learned Advocate Smt. Mehta for the petitioner informed this Court that necessary instructions were already passed on to the concerned officer of the petitioner at Bhuj not to proceed with any construction activity. One affidavit has been filed by respondent No. 1 indicating that construction work is proceeded with and is not stopped from 16th July 1996. Learned Advocate Smt. Mehta for the petitioner has submitted that the Law Officer of the petitioner is present and he has clearly stated that instructions have already been passed on to the concerned officer of the petitioner at Bhuj not to proceed with any construction work and he has instructions that no construction work has been carried on since 18th July last. Learned Advocate Smt. Mehta for the petitioner has indicated that the concerned officer of the petitioner from Bhuj has been summoned and he will file the necessary affidavit in that regard. No action on this score will therefore be necessary if the affidavit is filed by the concerned officer of the petitioner at Bhuj in this Court on or before 24th July 1996.

9. In the result, this petition is accepted. The order passed by the Collector of Bhuj (respondent No. 2 herein) on 31st January 1996 at Annexure E to this petition is quashed and set aside. The matter is remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. The petitioner is directed not to carry on construction till respondent No. 2 takes his fresh decision with respect to the alleged breach of conditions, if any. It is desirable that respondent No. 2 disposes of the matter as expeditiously as possible preferably by 31st October 1996.

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